

## **REMARKS/ARGUMENTS**

### **CLAIM REJECTIONS UNDER 35 USC 103**

Claims 21-35 and 52-57 are rejected under 35 USC 103 as being unpatentable over Cunningham et al. (US6,306,104) in view of Anderson et al. (US6,267,722). This rejection is respectfully traversed.

In respectively addressing Applicants' independent claims 21 and 28, the Examiner indicated that Figure 13C-13E of Cunningham et al. teaches Applicants' advantageous tolerance of 1/100 (0.01) inches, and that Figure 13E specifically teaches Applicants' advantageous tolerance of 1/200 (0.005) inches. The Examiner's indication is that Figure 13E of Cunningham et al. teaches a bodily fluid testing device that is configured such that its housing is placed on the bodily fluid sample location, and then after lancing and withdrawing of the lancing device, the edge of the test strip moves along a trajectory to the bodily fluid sample contacting location within a mechanical tolerance of 1/100 (0.01) or 1/200 (0.005) inches of the center of the bodily fluid sample. Applicants respectively disagree with the Examiner on this point. There is simply no teaching nor suggestion by Cunningham et al. of a bodily fluid testing device with such a 1/100 or 1/200 inch tolerance, as required respectively by Applicants' claims 21 and 28.

Whether or not Figure 13E indicates a desire to bring a test strip to the center of a bodily fluid sample, Cunningham et al. simply do not teach nor suggest any mechanism for doing so within a tolerance of 1/100 inch, or lower. As the test strip is brought directly onto the bodily fluid sample along a linear trajectory at some angle to the plane of the wound, the device of Cunningham et al. has two dimensions in that plane which determine its overall tolerance. Those skilled in the art understand that such will result in a tolerance that is greater than 1/100 inch.

Although Applicants have amended the claims with this submission, it is respectfully submitted that Applicants hereby expressly reserve the right to reopen the discussion with regard to the claims previously submitted, e.g., in a continuation, continuation-in-part, reexam, or reissue application. That is, it is Applicants' position that none of the prior art being relied upon by the Examiner teaches or suggests the invention as set forth in the previous amendment.

Applicants' claims 21 and 28, as now amended, respectively require a bodily fluid testing device that is configured such that its housing is placed on the bodily fluid sample location, and then after lancing and withdrawing of the lancing device, the edge of the test strip moves along a **non-linear trajectory** to the bodily fluid sample contacting location **within a mechanical tolerance of 1/100 (0.01) or 1/200 (0.005) inches of the center of the bodily fluid sample in the plane of the skin surface at the bodily fluid sample location**. This feature is neither taught nor suggested by Cunningham et al., neither alone nor in combination with Anderson et al.

The Examiner indicated that column 15, line 55-column 17, line 46 of Anderson et al. teach a bodily fluid testing device that is configured such that its housing is placed on the bodily fluid sample location, and then after lancing and withdrawing of the lancing device, the edge of the test strip moves along a trajectory to the bodily fluid sample contacting location within a mechanical tolerance of 1/100 (0.01) or 1/200 (0.005) inches of the center of the bodily fluid sample. Applicants again respectfully disagree. Anderson et al. state that an optical reader for an immunoassay device is brought to about 0.01 inches above the surface of the immunoassay test strip at column 16, lines 11 and 26 and at column 17, lines 3, 8 and 21. While bringing such an optical reader to about 0.01 inches of the surface of an immunoassay strip may help the reader in some way to optically read the strip, such is in no way related to moving a test strip within a tolerance of 0.01 inches of the center of a bodily fluid sample. Moreover, as now

amended, claims 21 and 28 clearly indicate that **the tolerances of 0.01 and 0.005 inches are with respect to the center of the bodily fluid sample in the plane of the skin surface at the bodily fluid sample location.** Moreover, neither Anderson et al. nor Cunningham et al. teach nor suggest moving an edge of a test strip along a non-linear trajectory, as required by Applicants' amended claim 21.

The Examiner is respectfully invited to call the undersigned attorney at 415-203-2782 or 415-674-6711 or email [andy@sfbayareapatents.com](mailto:andy@sfbayareapatents.com) to discuss any further concerns.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 50-4425. A duplicate page is enclosed.

Respectfully submitted,  
SF BAY AREA PATENTS, LLC

Dated: October 20, 2008

By /Andrew Vernon Smith/

Andrew V. Smith  
Reg. No. 43,132  
Attorney for Applicants

SF BAY AREA PATENTS, LLC  
601 VAN NESS AVENUE, #1108  
SAN FRANCISCO, CA 94102

Telephone: 415-674-6711  
Facsimile: 415-358-4795

Customer No. 73719

amended, claims 21 and 28 clearly indicate that **the tolerances of 0.01 and 0.005 inches are with respect to the center of the bodily fluid sample in the plane of the skin surface at the bodily fluid sample location.** Moreover, neither Anderson et al. nor Cunningham et al. teach nor suggest moving an edge of a test strip along a non-linear trajectory, as required by Applicants' amended claim 21.

The Examiner is respectfully invited to call the undersigned attorney at 415-203-2782 or 415-674-6711 or email [andy@sfbayareapatents.com](mailto:andy@sfbayareapatents.com) to discuss any further concerns.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 50-4425. A duplicate page is enclosed.

Respectfully submitted,  
SF BAY AREA PATENTS, LLC

Dated: October 20, 2008

By /Andrew Vernon Smith/

Andrew V. Smith  
Reg. No. 43,132  
Attorney for Applicants

SF BAY AREA PATENTS, LLC  
601 VAN NESS AVENUE, #1108  
SAN FRANCISCO, CA 94102

Telephone: 415-674-6711  
Facsimile: 415-358-4795

Customer No. 73719